

Shadow Report
of the Independent Commission for Human Rights (ICHR)
on the initial report submitted by the State of Palestine on the
implementation of the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment of 1984
Session # 1921 & 1924 (19-20 July 2022)

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Cruel, Inhuman or Degrading Treatment or Punishment of 1984**

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Introduction

The Independent Commission for Human Rights (ICHR) has reviewed the final version of the initial “report” submitted by the State of Palestine on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) of 1984 to the Committee against Torture (CAT). Received on 14 June 2019, the State of Palestine’s report was issued by the CAT on 26 August 2019 under Document CAT/C/PSE/1. The ICHR notes the improved quality of the report submitted to the CAT as compared to the version which was first presented to civil society organisations during the national consultation process sponsored by the ICHR in late 2017.

The ICHR recognises that the State of Palestine has been under the most protracted occupation in the world, impeding its obligation to give full effect to the Convention. The ICHR also appreciates the State of Palestine’s admission of some forms of torture in its initial report and its administrative and criminal accountability of persons involved in such acts. Such admission is a good starting point towards putting an end to torture within Palestine.

The ICHR has recorded a number of observations omitted from the State of Palestine’s report that should be clarified upon:

- **In relation to the Common Document**

1. The Common Document for all of the conventions, which the State of Palestine acceded to, has not been in place. The report is devoid of any reference to the constitutional and legal effect of the Convention in the Palestinian legal and judicial systems. It fails to clarify any future initiatives for bringing the

national legal framework in line with the international standards on torture and maltreatment, provided for under the Convention and the Optional Protocol thereto. The ICHR does not have any information on the official efforts made to develop the Common Document for the Convention, which the State has acceded to.

2. The report does not make clear the applicability of the Convention to the Gaza Strip, which falls under the *de facto* authority of the Hamas movement. It does not outline any formal actions being taken in this direction. Also, the ICHR has no knowledge of any formal procedures, which were, or will be, implemented in this regard.
3. The report fails to spell out how the State will implement the Convention in Area C, designated as such by the agreements signed with the Israeli occupying Power in 1993 and falling under control of the occupying Power. Furthermore, the report omits any reference to the steps to be taken by the State to implement the Convention in this area, if any. In the very least, the State does not mention in the report that it has not set any plans in this context.
4. The report does not make plain the formal procedures and future plans of the State to bring an end to placing all three branches of government under one power, consequently affecting the extent and form of accountability for torture and other forms of cruel, inhuman and degrading treatment. Since 2007, the Executive is in possession of the executive and legislative powers altogether. In addition, the Executive has powers to undertake procedures for appointing members of, and enacting legislation on, the Judicial Authority. This may undermine procedures for holding to account those persons responsible for torture and other forms of cruel, inhuman and degrading treatment under civil and criminal law.
5. The Report fails to refer to Israel violations, including restrictions placed on the entry of equipment and tools needed for criminal investigations, detection of crimes, and access to offenders in tandem with legal and human rights procedures that are consistent with the international standards summed up by the Convention. These procedures should not result in the violation of the body of any person by torture and other forms of cruel, inhuman and degrading treatment.
6. The report does not state the formal actions which were, or will be, taken by the State to avoid any instances of corruption, that may lead to the bodily violation of any person by torture and other forms of cruel, inhuman and degrading treatment. Having become a regular practice in different States, these actions particularly include those articulated by the Report of the

United Nations Special Rapporteur,¹ which examines the relationship between corruption and torture or maltreatment, including poor judicial accountability or use of torture to combat corruption. On particular note, a limited number of persons have been held to account before Palestinian courts for acts of torture or maltreatment, as demonstrated in the State's report.

- **In regards to the definition of torture and other forms of cruel, inhuman and degrading treatment**

1. The effective legislative framework does not provide a definition of the crime of torture as an independent crime within the meaning of the Convention. Operative laws consider a number of acts that constitute physical assault as torture. However, these are less criminalised than the act of "torture" or "maltreatment" as defined by the Convention.

On the other hand, laws in force deem the offence of torture as a misdemeanour, rather than a crime. The perpetrator is liable to insufficiently dissuasive penalties, which are disproportionate to the criminal offence and other conditions laid out by the Convention. These laws do not include the act of "cruel, inhuman and degrading treatment or punishment", which is committed by public servants within the format, manner, and conditions provided for by the Convention. Accordingly, the State needs to incorporate this term into its legal framework in conformity with the criminalisation of "torture" and other actions taken thereon as contained in the Convention.

2. The State has not put in place any legislative procedures for fully incorporating the Convention within the national legal system. Such measures would enable citizens to invoke the provisions of the Convention before national judiciary. Moreover, the Report does not lay out the State's guidelines for full incorporation of the Convention into the national legal system.

- **Data on the Gaza Strip**

- It is pertinent to refer to note that the Gaza Strip comprises (6%) percent (360 out of a total 5,860 square kilometres) of the territory of the State of Palestine as recognised by the United Nations. According to data released by the Palestinian Central Bureau of Statistics (PCBS) in mid-2022, the Gaza

¹ United Nations General Assembly, Human Rights Council, fortieth session, 25 February–22 March 2019, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Strip was home to at least (40%) percent of the Palestinian population. In line with the efforts made by the State of Palestine in its Report submitted to the CAT, on more than an occasion, the State announces that the Hamas movement is in control of that part of the State's territory. As indicated in Para. 9 of the Report, the actions taken by Hamas there are inadmissible and illegal in the eyes of the Government of the State of Palestine. However, the Report does not state the manner by which the State will ensure the application of the Convention to more than a third of its population (i.e., the Gaza population).

- The report does not include information on the actions and measures applicable in the Gaza Strip, such as circulars and policy actions issued by the Gaza *de facto* authority on the acts of torture, referred to in Paragraphs 15 and 16 of the report. Paragraphs 112-120 of the report do not provide a statement of the training and rehabilitation programmes delivered to law enforcement personnel on the themes of human rights in general, and fight against torture in particular, as provided for by Article 10 of the Convention. Although referenced in paragraphs 185-189 and 200, the Report does not provide data on the Israeli attacks on detention facilities and security personnel assigned to protect them. The tables in paragraphs 209 do not provide detailed statistical data regarding visits and medical services.

- **In relation to detention facilities, visits to detention facilities, and vocational and rehabilitation programmes for inmates**

The Report does not make reference to the deficiencies of detention facilities, nor does it make a mention of future plans and strategies to be implemented by the State to improve these facilities so that they are in harmony with relevant international standards.

In this regard, in 2019, the ICHR carried out a blanket assessment of detention facilities, using dozens of indicators specifically developed for this purpose. Key recommendations of the review process included:²

- **Management of detention facilities and staff**
 - Put in place specific regulations and criteria on incentives and penalties, which govern the staff of detention facilities.

² For more information, see ICHR. Assessment of the alignment of correction and rehabilitation centres in Palestine with international standards on prisons: Correction and rehabilitation centres in the West Bank, available at, www.ichr.ps (in Arabic).

- Apply a documented, strict penal system to hold accountable those who violate laws and policies within detention facilities.
- **Health care guarantees for inmates**
 - Implement a clear and documented policy on the appointment of a competent doctor.
 - Appoint a psychiatrist who visits detention facilities regularly and for a long enough period of time.
 - Provide a room for quarantine within the detention facility.
 - Recruit sufficient medical staff, including doctors and nurses, to be in operation 24 hours a day.
- **Accommodation infrastructure and facilities**
 - Provide all inmates with proper and clean beds and blankets.
 - Provide uniforms to inmates within the detention facility.
 - Distribute inmates to wards as per ability to coexist and mix with others.
 - Windows of all service facilities are wide enough to let in sunlight, enabling inmates to read and allowing the entrance and renewal of fresh air every day.
- **Rehabilitation**
 - Apply a policy that determines the number of working hours for inmates. In all correction and rehabilitation centres, work is not obligatory; it is, rather, a privilege given to some inmates.
 - Provide vocational training facilities (handcrafts, bakeries, and barber’s workshops).
 - Provide trainers of vocational training and education programmes.
 - Coordinate and network with community institutions and civil society organisations to rehabilitate and train women to help them take care of themselves before release.
 - Furnish opportunities for vocational training on non-traditional occupations and provide a library, including a comprehensive collection of books and reference materials.

- Coordinate with local institutions to provide education to detained juveniles. In this context, current efforts are inadequate.
- **Women’s detention centres**
 - Increase coordination and networking with community institutions and civil society organisations to rehabilitate and train women to help them take care of themselves before release.
 - Provide a gynaecological clinic or a female gynaecologist for female inmates independently of the general clinic.
 - In relation to the National Preventive Mechanism against Torture

On 29 December 2017, the State of Palestine acceded to the Optional Protocol to the Convention against Torture (OPCAT), which aims at establishing a national preventive mechanism against torture (NPM). However, the legal framework for the NPM, namely the Law by Decree No. 25 of 2022 on the National Commission against Torture, was only enacted in mid-2022. Together with civil society groups, the ICHR submitted a position paper on the NPM establishment as mandated in the law by decree. The ICHR emphasises the following points, which run counter to the standards of independence and impartiality prescribed by the OPCAT:

- a) Many provisions of the law by decree undermine the principles of NPM independence. It views the NPM as a State institution and government agency, to which all laws and regulations on official institutions are applicable. The enactment also deems that the chairperson and staff members of the Commission against Torture as civil servants, who are subject to the Civil Service Law. Procurement and tendering transactions are governed by the Public Procurement Law, treating the Commission as a full government body. Every time, NPM members are appointed by the President based on a recommendation of the Council of Ministers, contradicting the State of Palestine’s obligations under the OPCAT. These require the adoption of the highest standards of transparency and independence. When NPM members are chosen, the same approach applicable to the selection of commissioners of national human rights institutions will be in place. Many irregularities deprive the NPM of independence, impartiality, and objectivity at all levels.
- b) The law by decree greatly undermines the independence, transparency, and impartiality of the National Commission against Torture, which is established in accordance with its provisions. The law by decree does not make available the legal tools the Commission needs to exercise its powers

of preventing torture and ill-treatment. It runs counter to the universal Guidelines on NPMs of the UN Subcommittee on Prevention of Torture.

- c) Should it be applied under the stated format and before it is subject to further national and international consultations, the law by decree will tarnish the image and standing of the State of the Palestine before the Subcommittee on Prevention of Torture and other UN treaty bodies. It casts doubts on how serious the national will is to prevent torture. The ICHR called on relevant bodies to put enforcement of the law by decree on hold for further consultations with relevant stakeholders. The enactment needs to be amended in accordance with the OPCAT and Guidelines on NPMs.
- d) The law by decree does not entitle the National Commission against Torture to carry out unannounced visits to detention facilities. Rather, it stipulates prior arrangements for visits, never allowing the Commission to make some unannounced visits to certain cases in certain emergency circumstances. These visits do not require a long interval between a request for permission and actual implementation of visits.

- **In relation to deaths inside detention facilities**

The report is devoid of any reference to the incidents of death inside detention facilities in the West Bank and Gaza Strip. Apart from compensations paid by the State, the report does outline formal actions taken for investigation or procedures for administrative and criminal accountability of persons accused of the deaths, which investigations establish that they were caused by torture and other forms of cruel, inhuman and degrading treatment.

According to ICHR annual reports on the situation of human rights in the Palestinian territory 2015-2021, the number of announced deaths of inmates inside detention centres totalled 31, distributed as follows: 4 in 2015, 3 in 2016, 5 in 2017, 3 in 2018, 3 in 2019, 9 in 2020, and 4 in 2021.³

- **Claims of torture and maltreatment according to ICHR documentation**

The State's report refers to the administrative actions taken against a number of law enforcement officials, who were held administratively and criminally accountable for acts performed by them, impinging on the right to physical integrity by means of torture and other forms of cruel, inhuman and degrading

³ See ICHR annual reports, available at <https://www.ichr.ps/en/reports/annual-reports>.

treatment. However, reported figures continue to be much less than the number of relevant complaints/claims filed to the ICHR on an annual basis.

The report indicates that affected persons can lodge complaints to many agencies, including the ICHR. It states that these agencies received a number of claims of torture and other forms of cruel, inhuman and degrading treatment from the ICHR against some law enforcement personnel. However, the number of complaints allegedly forwarded by the ICHR (14 in 2017 and none in 2014-2016) is so different from the true figures demonstrated by the ICHR annual reports. Even though some were unsatisfactory to the ICHR, replies on a significant portion of complaints were provided by the security agencies, to which these complaints had been forwarded.

In 2016-2021, the ICHR received complaints from victims of torture, including at least 4,279 claims of torture and other forms of cruel, inhuman and degrading treatment, in both the West Bank and the Gaza Strip. These claims break down by year as follows: 865 in 2016, 898 in 2017, 676 in 2018, 692 in 2019, 410 in 2020, and 738 in 2021.

- **Claims to torture and maltreatment affecting children in 2016-2021**

In 2016-2021, a total of 505 claims of torture and other forms of cruel, inhuman and degrading treatment were filed by children, representing 12 percent of all claims made to the ICHR in this regard. These claims were distributed by year as follows: 113 in 2016, 120 in 2017, 60 in 2018, 98 in 2019, 26 in 2020, and 88 in 2021.

Children subjected to torture or maltreatment were detained against multiple backgrounds, mainly, theft, letting off fireworks, drug abuse, hacking of Facebook accounts, and murder. Claims of torture involved all security agencies, particularly the Preventive Security, Police, General Intelligence, Military Police, Internal Security, and juvenile welfare institutions. Patterns of torture inflicted on children included physical and psychological abuse, torture, threats during detention, and other forms of cruel, inhuman and degrading treatment.

- **Claims to torture and maltreatment affecting women in 2016-2021**

In 2016-2021, at least (9%) percent of all claims of torture and other forms of cruel, inhuman and degrading treatment were filed by women. These claims broke down by year as follows: 84 in 2016, 65 in 2017, 72 in 2018, 43 in 2019, 42 in 2020, and 86 in 2021.

- **Satisfaction with the findings of investigations into claims filed by the ICHR**

The Report mentions that criminal accountability was pursued in some cases, which involved violation of the body by means of torture and other forms of cruel, inhuman and degrading treatment. However, the majority of replies sent to the ICHR indicated that government bodies had investigated torture claims, but found no valid grounds for these claims. Over and over again, the ICHR has stressed the need to launch serious investigations into the claims it files.

- **In relation to organ harvesting and transplant**

The report does not provide information on the actual enforcement of the Law by Decree No. 6 of 2017 on Organ Harvesting and Transplant. The harvesting and transplant of some organs are permitted under certain conditions. This procedure has the noble goal of a better health condition for human beings. However, it might involve some irregularities, which fall within the category of “torture and other forms of maltreatment” or human trafficking. Nevertheless, the ICHR did not record any complaints in regards human trafficking.

The ICHR annual review shows that health statistical reports released by the Ministry of Health (MoH) are devoid of information on the nature and number of organs harvesting and transplant surgeries every year. The State’s public plans and strategies make no reference to any efforts to enforce the law by decree into effect, establishing an organ bank, and putting in place regulations and instructions needed to enforce the law by decree. For this reason, it is necessary that the State present comprehensive data on the actual enforcement of the said law by decree. Initiated by the State in 2016, organ harvesting and transplant surgeries may give rise to human rights and legal risks, potentially leading to human trafficking, putting lives at risk, or stealing organs.

- **Invalidating confessions obtained through torture and other forms of cruel treatment**

Paragraph 183 of the State’s report indicates that national legal provisions allow courts to invalidate any confessions obtained from accused persons through torture and other forms of cruel treatment. However, the report does not state the number of court cases, which have invalidated confessions on these grounds. It also does not make reference to court proceedings instituted to hold to account perpetrators of torture or other forms of cruel treatment. Of note, the ICHR is informed about a number of cases, in which courts rendered

null confessions obtained through torture and other forms of maltreatment. At the same time, however, neither the Public Prosecution nor the Military Prosecution placed any law enforcement officials accused of such acts under criminal investigation. These officials were not, therefore, held criminally accountable. A case in point was the decisions of the Palestinian Court of Cassation no. 117 of 2016 and no. 315 of 2014.

- **On training and rehabilitation of detention facility managers**

The report highlights significant efforts and trainings provided to law enforcement personnel, but does not explain the impact of these initiatives. It does not state the reason for the increasing number of claims of torture and other forms of cruel, inhuman and degrading treatment, which the ICHR and other human rights actors continue to receive every year.

In addition to some public activities concerning human rights curricula at some universities, the Report makes reference to awareness raising and training efforts made by the Ministry of Interior, relevant agencies, ICHR, civil society groups, and particularly human rights organisations in the fight against torture and other forms of cruel, inhuman and degrading treatment. However, the Report makes no mention of the official efforts exerted by the Ministry of Education and Higher Education and Ministry of Information to prohibit torture and other forms of cruel, inhuman and degrading treatment in formal educational curricula, programmes, and information materials.

- **In relation to compensating victims of torture and other forms of cruel, inhuman and degrading treatment**

1. While the Palestinian Basic Law of 2002 provides for compensating persons affected by acts of torture, the national legal system contains provisions on the right to claim compensation for torture and other forms of cruel, inhuman and degrading treatment. Effective since 1944, however, the national legal framework needs to be upgraded in line with the developments that have taken place since then. Along the vein, the Report makes no reference to any government directions to develop this legal system with a view to fulfil the State's obligations following accession to the Convention in 2014 as well as to enforce constitutional provisions under the Basic Law of 2002.

2. The report does not provide information on the practical application of civil remedies for persons affected by torture and their families. Of particular note, the national legal framework for civil damages needs to be upgraded, enabling affected persons in torture cases to claim their rights. Under effective laws, claims procedures are so complicated and mostly defective. The Report does not state the number of cases, in which courts ruled for compensating victims of torture or the number of cases currently heard by courts. The ICHR is unaware of any cases of compensation for torture or maltreatment, which Palestinian courts disposed over the eight years following the State of Palestine's accession to the Convention.
3. Also, the report does not delineate the extent to which the State implements the five substantive obligations identified by the CAT General Comment No. 3 of 2012 to ensure effective redress for persons affected by acts of torture. These five forms of reparation include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
4. Based on its monitoring, the ICHR has not noticed any official efforts undertaken to provide redress to persons affected by the Israeli occupation, including the institution of proceedings before international courts, or by government agencies and respective actions with a view to put into effect the five substantive obligations mentioned above. In relation to providing redress for victims of torture and other forms of cruel, inhuman and degrading treatment, poor government efforts are borne out by the fact that Para. 177 of the Report indicates that only one lawsuit was filed in Palestinian courts, seeking compensation for a citizen who claimed to have been tortured. No verdict had been handed down in the case as at the time writing. On the other hand, Para. 43 indicates that a court convicted 24 security officers of acts of torture and other forms of cruel, inhuman and degrading treatment.
5. The report does not go over the efforts made, or to be made, by the State to provide redress to victims of torture, particularly legal aid to affected persons in order to obtain redress. In practice, victims do not have the means to afford the high cost of these judicial claims.

- **In relation to the treatment and rehabilitation of victims of torture and maltreatment**

In paragraph 122 *et seq.*, the Report explains official efforts to rehabilitate inmates in detention facilities and correction and rehabilitation centres. Still, the report fails to refer to efforts undertaken to treat and rehabilitate persons

subjected to torture so that they can return to normal life and reintegrate into society. Further, the report does not indicate government preparations for the rehabilitation process, including cadres, centres, and services provided by the State.

- **In relation to persons held in psychiatric care centres**

The report refers to a number of community institutions, which provide day care to persons with mental and/or psychosocial disabilities. There is one psychiatric hospital in the Bethlehem governorate. However, the report does not provide adequate data on persons with psychosocial impairments in the West Bank and Gaza Strip. In particular, there is no mention of the number of inmates at the Bethlehem hospital, number of MoH psychiatric clinics, number of patients who receive electroconvulsive therapy, and how relevant protocols are consistent with international standards. Such conduct might fall within the definition of “torture and other forms of cruel, inhuman and degrading treatment.”

Additionally, the report fails to mention the medicines provided by the government health insurance system to persons with psychological disabilities. A number of drugs needed by these patients are not included on the list of medicines provided by the government in line with the health insurance scheme. According to many psychiatric patients, government and private insurance systems do not make available many necessary drugs. Those who have the financial means are forced to buy these drug at their own costs.⁴

Although the State of Palestine acceded to the UN Convention on the Rights of Persons with Disabilities in 2014, a legal framework for this group of persons has not been put forward yet. Developed in 2012, the Draft Law on Psychological Health has not been approved. No relevant bylaws have been compiled in reference of effective laws, particularly the Public Health Law of 2004. A brief reference is made to that group under the 2004 Bylaw of the 1999 Law on Persons with Disabilities.

- **In relation to violence in schools**

Although it falls within the purview of the Convention, the State’s report makes no reference to school violence and government actions taken to prevent it. According to the PCBS, 25 percent of children in the 12-17 age group were

⁴ For more information, see ICHR, Rights of persons benefiting from psychological health services in Palestine, 2017, available at www.ichr.ps.

subjected to one type of violence at school, including (26%) males and (15%) females. (17%) of children, including (26%) males and (7%) females, experienced physical violence by a teacher. (15%) of children ((18%) males and (12%) females) suffered from psychological violence by a teacher.

- **In relation to forensic medicine**

The report does not make clear the State infrastructure of forensic medicine and aspects of organisational structure and functions that need to be improved. It does not provide a detailed account of the number of forensic practitioners, reports produced over the past five years, persons subjected to torture and examined by forensic institutes, forensic practitioners who were under criminal investigation, and those held judicially accountable for misconduct.

The report lacks reference to the State's future plans to develop this important facility of criminal justice, which helps to eliminate acts of torture and hold offenders to account.

- **Recommendations**

The State needs to:

1. Take expedited action to develop the Common Document, which addresses the general legal structure as well as the overall legal, constitutional and practical situation of the State of Palestine, which continues to be under the full-fledged Israeli occupation and lacks power over its land, air, and sea borders.
2. Put in place measures and procedures for the manner and circumstances of implementing the Convention in the Gaza Strip, as well as procedures and actions to reduce the impact of Israeli attacks on detention facilities and the security protecting them.
3. Address deficiencies of detention facilities, develop the plans and strategies needed to improve the conditions of these facilities, and put an end to potential acts of torture and maltreatment. This should cover all important aspects, particularly management of detention facilities and staff, health care guarantees for inmates, and infrastructure of detention centres, including places of detention for children in conflict with the law, women, persons benefiting from psychological health services, and persons sentenced by law.

4. Rescind and repeal the Law by Decree No. 25 of 2022 on the National Commission against Torture. The agreed outcomes of dialogue on the NPM establishment will be maintained. The NPM's legal and administrative structure will be in tandem with the standards set forth by OPCAT, ensuring its independence, integrity, and impartiality. The NPM will be enabled to conduct unannounced visits to detention facilities.
5. Open adequate investigations into all incidents of death inside the State's detention facilities. Those proven to have caused these deaths will be subject to administrative, criminal, and civil liability.
6. Launch serious and adequate investigations into claims of torture and maltreatment filed by the ICHR and implement relevant procedures, particularly penal, administrative and criminal proceedings, civil remedies, and rehabilitation, for the benefit of victims of torture or maltreatment, especially children and women.
7. Disclose detailed and practical information on the Law by Decree No. 6 of 2017 on Organ Harvesting and Transplant, particularly data on and number of organ transplants (e.g. kidneys). In addition to establishing an organ bank, regulations and bylaws will be developed for the law by decree.
8. Follow up on court decisions, which invalidate confessions obtained from accused persons through torture or other forms of cruel treatment. Persons accused of extracting these illegal confessions will have brought to trial and held to account.
9. Review and examine why the main trainings delivered to law enforcement personnel have had a limited impact on reducing the cases of torture and maltreatment, recorded by the ICHR and civil society groups on an annual basis.
10. Provide a universal periodic review of general and higher educational curricula and information materials broadcast by official media outlets. These will incorporate the prohibition of torture and other forms of cruel, inhuman and degrading treatment.
11. Put in place actions and measures that limit or prevent school violence, particularly at governmental schools.
12. Amend civil laws, which allow compensation for acts of torture and maltreatment, enabling affected persons to receive remedies in summary court proceedings. The State will also amend laws on the physical and psychological rehabilitation of this group. The State will be obliged to provide legal aid to persons subjected to torture or maltreatment.

13. Develop forensic medicine to ensure criminal and judicial accountability of persons who commit acts of torture and other forms of cruel, inhuman and degrading treatment. Future plans will be developed to scale up this sector.
14. Finalise actions to develop the legal framework for persons with psychological disabilities. In particular, the Draft Law on Psychological Health, which was developed in 2012, should be completed. Bylaws of the 2004 Public Health Law and 1999 Law on Persons with Disabilities will be in place. The State will also take action to establish official centres to take care of this group of citizens throughout governorates.
15. Make available medicines, medical supplies, and rehabilitation needed by persons with psychological disabilities through the government health insurance or other mechanisms.

In conclusion, the ICHR emphasises that real and full realisation of the human right to physical, mental, and psychological integrity by the State can only be achieved when the Israeli occupation of the territory of the State of Palestine – the most protracted in the world – is brought to an end.

Committee Against Torture (CAT)



United Nations

**Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment
or Punishment**



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the initial report of the State of Palestine*

1. The Committee considered the initial report of the State of Palestine¹ at its 1921st and 1924th meetings,² held on 19 and 20 July 2022, and adopted the present concluding observations at its 1932nd and 1933rd meetings, held on 26 and 27 July 2022.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, along with the supplementary information provided during the consideration of the initial report. It regrets, however, that the report was submitted more than four years late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the responses provided to the questions and concerns raised during the consideration of the initial report.

4. The Committee recognizes that the ongoing Israeli occupation of the territory of the State party, the expansion of settlements and the continued blockade of the Gaza Strip, which are illegal under international law,³ pose severe challenges for the State party in fully implementing its obligations under the Convention and lead to grave violations of the rights of Palestinians, such as arbitrary detention, torture and ill-treatment, excessive use of force and abuse by Israeli security forces, acts of violence by Israeli settlers, restrictions on freedom of movement, forced displacement and evictions, seizure of private land, house demolitions and illegal settlements, restrictions on gaining access to health-care services and denial of access to humanitarian aid. The Committee recalls the obligations of Israel, as the occupying Power, under international humanitarian law and international human rights law.⁴ It recognizes that the above-mentioned challenges limit the State party's effective control of its jurisdiction over its own territory and its capacity to effectively prevent and combat torture and ill-treatment. However, it reminds the State party that the Convention is applicable in its entire territory and that the State party should take all possible measures to implement it in all parts of the territory. In that regard, the Committee regrets that, notwithstanding the agreement between the Fatah and Hamas movements to end Palestinian division signed on 12 October 2017, the State party has made limited progress in resolving internal political issues that negatively affect the full enjoyment by Palestinians in the West Bank, including

* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

¹ CAT/C/PSE/1.

² See CAT/C/SR.1921 and CAT/C/SR.1924.

³ See Security Council resolution 2334 (2016) and other relevant Security Council resolutions, including resolutions 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1397 (2002), 1515 (2003), 1850 (2008) and 1860 (2009). See also the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004); and Human Rights Council resolutions S-9/1 and S-12/1.

⁴ See CAT/C/ISR/CO/5.



East Jerusalem, and the Gaza Strip of their rights under the Convention and contribute to the political and geographic fragmentation of the State party's territory. It notes that, owing to this fragmentation, Palestinians continue to be subjected to multiple legal systems that impede the full realization of their rights under the Convention.⁵

B. Positive aspects

5. The Committee welcomes the accession to or ratification of the following international instruments by the State party since its accession to the Convention:

- (a) The Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, on 2 April 2014;
- (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 29 December 2017;
- (c) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 10 April 2019;
- (d) The International Covenant on Civil and Political Rights, on 2 April 2014;
- (e) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 18 March 2019;
- (f) The International Covenant on Economic, Social and Cultural Rights, on 2 April 2014;
- (g) The International Convention on the Elimination of All Forms of Racial Discrimination, on 2 April 2014;
- (h) The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, on 2 April 2014 and 10 April 2019, respectively;
- (i) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 2 April 2014 and 10 April 2019, respectively;
- (j) The International Convention on the Suppression and Punishment of the Crime of Apartheid, on 2 April 2014;
- (k) The Rome Statute of the International Criminal Court, on 2 January 2015;
- (l) The United Nations Convention against Transnational Organized Crime, on 2 January 2015;
- (m) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 29 December 2017;
- (n) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 29 December 2017.

6. The Committee welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the adoption of the following:

- (a) Amendments to the Personal Status Law, in 2019, which increase the minimum age of marriage for girls and boys to 18 years;
- (b) Decree-Law No. 4 on the protection of Palestinian juveniles, in 2016.

7. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the following:

⁵ CERD/C/PSE/CO/1-2, paras. 3-4; CRC/C/PSE/CO/1, paras. 4-5; and CEDAW/C/PSE/CO/1, paras. 9-10.

- (a) The strategic plan for the protection of children (2018–2022) and the sectoral strategy on juvenile justice;
- (b) The intersectoral plan for gender equality and justice (2017–2022);
- (c) The national observatory to study violence against women, in 2016;
- (d) The national strategy for justice and rule of law (2014–2016);
- (e) The strategic plan for combating violence against women (2011–2019);
- (f) The Special Prosecutor’s Office to combat gender-based violence against women and girls.

D. Principal subjects of concern and recommendations

Legal status of the Convention

8. While commending the State party for ratifying the Convention without reservations, the Committee is concerned about the interpretation of the Supreme Constitutional Court, in its decisions No. 4 (2017) of 19 November 2017 and No. 5 (2018) of 12 March 2018, according to which international treaties acceded to by the State party take precedence over national legislation only insofar as they are consistent with the national, religious and cultural identity of the Palestinian Arab people, which may impede the enjoyment of the rights set forth in the Convention. The Committee is also concerned that the Convention has not yet been published in the Official Gazette to make it enforceable in the State party⁶ (arts. 2 and 4).

9. The State party should:

- (a) **Fully and expeditiously incorporate the provisions of the Convention into its national law, including through publication in the Official Gazette, and take all possible measures to ensure its implementation throughout its territory;**
- (b) **Ensure that the interpretation of the Supreme Constitutional Court, in its decisions No. 4 of 19 November 2017 (2017) and No. 5 (2018) of 12 March 2018 and their application, do not prevent people living in the territory of the State party from fully enjoying their rights under the Convention.**

Harmonization of legislation and compliance with the Convention

10. While welcoming the establishment in 2017 of a legislative harmonization committee to review all laws to ensure their compliance with the human rights treaties to which the State party has acceded, including the Convention, the Committee is concerned that this committee has only reviewed selected laws and that no timeline has been established to fully harmonize domestic legislation with the provisions of the Convention. The Committee is also concerned that:

- (a) The Palestinian Legislative Council was dissolved by the Supreme Constitutional Court, in its decision No. 10 on 12 December 2018;
- (b) Since the suspension of the Council in 2006, the State party has legislated by decree-laws issued by the President, which are neither recognized nor enforced in the Gaza Strip, leading to further fragmentation of the legal system and subjecting Palestinians in the Gaza Strip and the West Bank, including East Jerusalem, to multiple sets of laws affording varying levels of protection;
- (c) No time frame has been set for the review and adoption of draft laws, such as the draft penal code, the draft criminal procedure code, the draft decree-law on family

⁶ CERD/C/PSE/CO/1-2, paras. 9–10; CRC/C/PSE/CO/1, paras. 6–7; and CEDAW/C/PSE/CO/1, paras. 12–13.

protection, the draft personal status code and the draft decree-law on the rights of persons with disabilities⁷ (arts. 2 and 4).

11. The Committee urges the State party to:

(a) **Restore the democratic legislative process to facilitate the harmonization of the different sets of laws implemented in the Gaza Strip and the West Bank, including East Jerusalem, to ensure that all persons living under the jurisdiction of the State party are protected equally under the law;**

(b) **Adopt a clear time frame for the completion of the review of the existing legislative framework, in collaboration with civil society organizations, to ensure compliance with the provisions of the Convention;**

(c) **Expedite the review of draft laws, including the draft penal code, the draft criminal procedure code, the draft decree-law on family protection and the draft decree-law on the rights of persons with disabilities to ensure their compliance with the Convention and their adoption.**

Definition and criminalization of torture

12. The Committee notes that torture is explicitly prohibited under article 13.1 of the Palestinian Basic Law 2003 and that such prohibition may be inferred from a number of existing laws.⁸ It also notes that a comprehensive definition of torture in conformity with that provided for in article 1 of the Convention was included in Decree-Law No. 25 on the National Commission against Torture, which was published in the Official Gazette on 25 May 2022. However, the Committee is concerned that torture is considered a misdemeanor and that punishments are not commensurate with the gravity of the acts and are subject to amnesty as well as to statutes of limitations (arts. 1 and 4).

13. **The State party should ensure that its criminal legislation, including the draft penal code, encompasses a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that acts of torture are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention, and are not subject to amnesty or pardon. Moreover, the State party should ensure that the scope of the definition of torture is extended to anyone who attempts to commit torture or who is complicit or participates in torture. In that regard, the Committee wishes to draw the State party's attention to its general comment No. 2 (2007), in which it pointed out that serious discrepancies between the definition in the Convention and the definition in domestic law created actual or potential loopholes for impunity. Furthermore, the State party is invited to amend its domestic legislation to incorporate a provision on the non-applicability of statutes of limitations to the crime of torture.**

Absolute prohibition of torture

14. The Committee is concerned that there is no clear provision in the State party's legislation to ensure that the prohibition against torture is absolute and non-derogable. It is also concerned that, according to the Jordanian Penal Code of 1960 and the British Mandate Penal Code of 1936, which are applicable in the West Bank and the Gaza Strip, respectively, as well as the Palestinian Revolutionary Penal Code of 1979, which is applicable in both the West Bank and the Gaza Strip, a person may be exempt from criminal liability for acts of torture or ill-treatment if such acts are perpetrated while obeying an order issued by a competent authority that must be obeyed by law, unless that order is illegal. The Committee regrets the lack of information on whether mechanisms or procedures for protecting

⁷ CERD/C/PSE/CO/1-2, paras. 13–14; CRC/C/PSE/CO/1, paras. 8–9; CEDAW/C/PSE/CO/1, paras. 14–15.

⁸ Such as the Penal Procedures Law (3) of 2001, the General Intelligence Law (17) of 2005, the Law Relating to Reformatory and Rehabilitation Centres ("Prisons"), No. 6 of 1998, the Law of the Palestinian Child, No. 7 of 2004 and Decree-Law No. (4) of 2016 on the protection of juveniles.

subordinates from reprisals exist so as to enable them to refuse to obey illegal orders in practice (art. 2).

15. The State party should ensure that the principle of absolute prohibition of torture is incorporated into its legislation and that it is strictly applied, in accordance with article 2 (2) of the Convention. The State party should also ensure that an order from a superior officer may not be invoked as justification for torture and, to that end, establish a mechanism for the protection of subordinates who refuse to obey such an order and ensure that all law enforcement officers are informed of the prohibition against obeying unlawful orders and are made aware of the protective mechanisms put in place.

State of emergency

16. While taking note of the state of emergency declared by the State party on 5 March 2020 to protect public health, following the onset of the coronavirus disease (COVID-19) pandemic, the Committee is concerned that the continuous extension of the state of emergency to date, through the regular adoption of new declarations by presidential decrees and decree-laws, does not meet the requirements set forth in the Basic Law of 2003,⁹ raising concerns about the legality of the emergency measures taken in response to the pandemic. It is also concerned at allegations that human rights defenders, journalists, political opponents and government critics have been subjected to excessive use of force and arbitrary arrest and detention under such emergency measures (art. 2).

17. The State party should limit the declaration and duration of a state of emergency to situations in which it is strictly necessary and at all times respect the provisions of the Convention, recalling that no exceptional circumstances may be invoked as a justification for torture.

National human rights commission

18. While noting that the Independent Commission for Human Rights has been granted “A” status by the Global Alliance of National Human Rights Institutions since 2015, the Committee is concerned that the draft law formalizing the establishment of the Commission has not yet been adopted, notwithstanding its submission to the Palestinian Legislative Council in 2005.¹⁰ It is also concerned that the resources allocated to the Commission are insufficient to allow it to perform all its functions effectively, notably its role in conducting visits to places of detention and in receiving and investigating complaints about alleged human rights violations. Moreover, the Committee is concerned that the mandate of the Commission does not allow it to conduct unannounced visits to places of deprivation of liberty. It is further concerned about the lack of information regarding concrete measures taken by the State party to ensure effective implementation of the Commission’s recommendations, in particular with regard to follow-up investigations, prosecutions and the outcome of cases referred by the Commission to the prosecution services concerning torture allegations (art. 2 (1)).

19. The State party should formalize in law the establishment of the Independent Commission for Human Rights and take the necessary measures to ensure the Commission’s functional independence by guaranteeing it an adequate budget that allows it to fulfil the mandate entrusted to it, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party should also ensure that the Commission is able to conduct unannounced and regular visits to all detention facilities in the State party. Lastly, the State party should take all necessary measures to ensure effective implementation of the Commission’s recommendations and, in particular, follow up on complaints of torture lodged with the Commission, undertake effective investigations and prosecutions of perpetrators and provide redress to victims.

⁹ Article 110 of the Basic Law of 2003 permits a state of emergency to be declared for a maximum of 60 days with the approval of two thirds of the members of the Palestinian Legislative Council.

¹⁰ CERD/C/PSE/CO/1-2, paras. 15–16.

Fundamental legal safeguards

20. While taking note of the procedural safeguards to prevent torture and ill-treatment that are enshrined in the Basic Law of 2003 and Criminal Procedure Code of 2001, the Committee regrets the absence of an explicit provision on the right to have access to a lawyer immediately upon arrest and that articles 97 and 98 of the Criminal Procedure Code allow the interrogation of detainees without the presence of a lawyer “in the event of a flagrant crime, necessity, urgency, or fear that the evidence may be lost”. It is also concerned about reports indicating that persons in custody are not routinely afforded all fundamental legal safeguards from the very outset of deprivation of liberty, in practice in both the West Bank and the Gaza Strip. In that respect, it has been reported that: (a) lawyers are sometimes not allowed to meet with their clients during the period of the investigation; (b) timely access to an independent medical examination is not a standard practice aimed at uncovering signs of torture and ill-treatment, in particular for persons in pretrial detention; (c) the right to notify a relative or a person of one’s choice is often delayed; and (d) arrested persons are often brought before the competent authority several days or even weeks after their arrest, well beyond the 24-hour legal limit, extendable for another 48 hours, which may leave suspects vulnerable to an increased risk of torture or ill-treatment. The Committee is further concerned about reports that, in February 2022, the President of the State party signed five decree-laws amending the Criminal Procedure Code No. 3 of 2001, the Civil Procedure Code No. 2 of 2001, the Law on Evidence No. 4 of 2001, the Law on Formation of Courts No. 5 of 2001 and the Judicial Authority Law No. 1 of 2002, which raise concerns regarding the protection of the principle of presumption of innocence, the renewal of pretrial detention without the presence of the defendant or his or her lawyer, the right of defence and the imposition of a higher accountability threshold for crimes committed by public servants and law enforcement officials (art. 2).

21. The State party should:

(a) **Ensure that all persons deprived of their liberty are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their detention, including notably:**

- (i) **Being informed of the reasons for the arrest and the nature of any charges against them, in a language that they understand;**
- (ii) **Being informed of and having their right guaranteed to unimpeded access to an independent lawyer of their choice or, if necessary, to free legal aid of adequate quality, including during the initial interrogation and inquiry;**
- (iii) **Having the right to request and receive an independent and confidential medical examination, free of charge, or by a doctor of their choice upon request;**
- (iv) **Having their medical records immediately brought to the attention of a prosecutor as an object of investigation whenever the findings or allegations may indicate torture or ill-treatment;**
- (v) **Being able to notify a family member, or any other person of their choice, of their detention immediately after apprehension;**
- (vi) **Being brought before a judge within the time frame prescribed by law;**
- (vii) **Being registered at the place of detention;**
- (viii) **Being able to challenge the legality of their detention at any stage of the proceedings;**

(b) **Establish a central register of detention for all detainees at all stages of their deprivation of liberty, including during transfers to different places of detention, and indicate the type of information recorded and the specific measures taken to ensure accurate record-keeping as an important safeguard against incommunicado detention and enforced disappearance;**

(c) **Review the five decree-laws amending the Criminal Procedure Code No. 3 of 2001, the Civil Procedure Code No. 2 of 2001, the Law on Evidence No. 4 of 2001, the Law on Formation of Courts No. 5 of 2001 and the Judicial Authority Law No. 1 of**

2002, in consultation with the Independent Commission for Human Rights and civil society organizations, to ensure compliance with the provisions of the Convention;

(d) **Provide information to the Committee on the number of complaints received regarding failure to respect fundamental legal safeguards and on the outcome of such complaints, including the disciplinary measures taken against officials who fail to afford fundamental legal safeguards, in the next periodic report.**

Arbitrary detention

22. The Committee is concerned about reported cases of persons detained in the West Bank under the custody of the Joint Operations Committee¹¹ who have been kept in detention despite release orders issued by the courts. It is concerned that those detainees were only released once a written approval was provided by the President of the Palestinian Authority or the Prime Minister for their release (arts. 2, 11 and 16).

23. The State party should take all necessary measures to ensure that all judicial orders to release individuals from detention are promptly implemented, including those concerning individuals detained under the custody of the Joint Operations Committee.

Administrative detention

24. The Committee is greatly concerned at the continuous recourse to administrative detention by the State party under the Jordanian Crimes Prevention Act of 1954, which is applicable in the West Bank and allows for detention without charge, and raises issues about the separation of powers between the executive and judicial branches. It is particularly concerned at the increasing number of persons held in administrative detention and for long periods, during which detainees are deprived of procedural guarantees. It is also concerned that administrative detention is used against women and girls who are victims of violence, under the pretext of protecting them (arts. 1, 2, 11 and 16).

25. The State party should abolish the practice of “protective custody” in cases of gender-based violence. It should also ensure that all detainees, including those kept in any form of administrative detention, are afforded, in law and in practice, all fundamental procedural safeguards from the very outset of their deprivation of liberty. The State party should develop and implement alternatives to administrative detention and should use detention only as a last resort and, when detention is necessary and proportionate, for as short a period as possible. The State party should take immediate measures to amend or repeal the Jordanian Crimes Prevention Act of 1954 with a view to bringing it into compliance with international human rights standards and with the State party’s obligations under the Convention.

Unofficial places of detention

26. The Committee is concerned about reports that individuals are held in unlawful and incommunicado detention by Palestinian armed groups, including the military wing of the Hamas Al Qassam brigades and the Islamic Jihad military wing Saraya Al Quds, for “collaboration with the enemy” and criticizing armed groups. It is further concerned about allegations of torture and ill-treatment being perpetrated in such unofficial places of detention (arts. 2 and 11).

27. The State party should take all possible measures to ensure that no one is held in unofficial places of detention on its territory, including by non-State actors. The Committee urges the State party to investigate the existence of any unofficial detention places and identify those who establish and maintain them and engage in practices of torture.

¹¹ The Joint Operations Committee (formerly known as the Joint Security Committee) serves as a joint structure of the Palestinian security services, with the stated aim of centralizing the investigation of security-related crimes and those involving members of the security forces.

Allegations of widespread torture or ill-treatment and the lack of accountability

28. The Committee is concerned about consistent reports indicating that persons in custody, including in the facilities under the authority of the security forces and intelligence services in both the West Bank and the Gaza Strip, are subjected to torture or ill-treatment, in particular during the investigation stage of proceedings. It observes that the mechanisms established by the State party to receive and investigate complaints of torture and ill-treatment by officials lack confidentiality and fail to protect complainants and witnesses, while existing investigation bodies, principally the Public Prosecutor, lack the necessary independence as they belong to the same structure that employs the alleged perpetrators. The Committee is also concerned that only a few complaints of torture and ill-treatment have led to prosecution and almost none to conviction of the perpetrators, which contributes to a climate of impunity (arts. 2, 11–13 and 16).

29. **The State party is urged to immediately adopt measures to ensure accountability for all acts of torture or ill-treatment involving all perpetrators by undertaking prompt, impartial and effective investigations into complaints through an independent mechanism that complies with the requirement of institutional independence in order to avoid conflicts of interest in the investigation of complaints by peers, by prosecuting perpetrators of such violence and by punishing them with appropriate penalties. The State party is also urged to ensure, in practice and as required under applicable law, that persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation. The State party should conduct investigations on its own initiative, whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, put in place an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and prisons, and ensure that complainants are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint. The State party should also compile and disseminate up-to-date statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases involving allegations of torture and ill-treatment.**

Confessions obtained through torture and ill-treatment

30. The Committee is concerned about reports indicating that, despite the existing legal provisions set forth in article 13.2 of the Basic Law regarding the inadmissibility of evidence obtained by torture and duress, coerced confessions are reportedly admitted as evidence in court. Moreover, the information before the Committee suggests that the allegations of forced confessions under torture or ill-treatment made before a trial or appeal judge are often ignored and not thoroughly pursued and that serious shortcomings in documenting signs of physical and psychological torture are often caused by the lapse of time between the alleged event and its belated investigation (art. 15).

31. **The State party should ensure in practice that confessions obtained through torture or ill-treatment are ruled inadmissible, except when they are used as evidence against a person accused of committing torture, and that such cases are investigated. It should expand specialized training programmes for both judges and prosecutors to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of such acts; develop training modules for law enforcement officers on non-coercive interviewing and investigation techniques; provide the Committee with information on any cases in which confessions were deemed inadmissible on the grounds that they had been obtained through torture or ill-treatment; and indicate whether any officials have been prosecuted and punished for extracting such confessions.**

Excessive use of force against demonstrators

32. The Committee is concerned about the allegations of the excessive use of force in both the West Bank and the Gaza Strip, notably the use of lethal weapons resulting in deaths and injuries, including of children, arbitrary arrests, incommunicado detention and torture and ill-treatment of peaceful protesters by the security forces, as well as by unidentified armed

elements in the context of demonstrations that have occurred while enforcing measures designed to control the COVID-19 pandemic and in the aftermath of the postponement of national elections in April 2021 and Nizar Banat's death in custody in June 2021. The Committee is also concerned about the reported excessive use of force by the Palestinian security forces, including the use of tear gas and sound bombs, in Palestinian refugee camps. The Committee takes note of the State party's commitment to ensuring accountability for the above acts. However, it regrets the lack of public reports on the investigations carried out into those incidents, the limited progress made on investigations and the fact that only a handful of prosecutions have been undertaken to date (arts. 2, 12–14 and 16).

33. The State party should:

(a) **Review domestic legislation on the use of force and weapons and develop clear guidelines, if necessary, incorporating the principles of lawfulness, necessity and proportionality and the precautionary principle, bring the laws and regulations governing the use of force into line with international standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, and provide systematic training to all law enforcement officers on these international standards;**

(b) **Ensure that law and order is maintained, to the greatest extent possible, by the civilian authorities and that all officers can be effectively identified at all times when carrying out their functions to help to ensure individual accountability and protection against acts of torture and ill-treatment;**

(c) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to the excessive use of force by State and non-State actors, and ensure that the perpetrators are prosecuted and that the victims or their families receive full redress.**

Human rights defenders, journalists and political opponents

34. The Committee is concerned that human rights defenders, including advocates for women's rights, journalists, bloggers, political opponents and government critics continue to report acts of intimidation, harassment, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment by the security forces and intelligence agencies in both the West Bank and the Gaza Strip. It is concerned by the lack of effective protection provided by the State party to human rights defenders, journalists, political opponents and civil society actors at risk, including by promptly, effectively and impartially investigating, prosecuting and punishing such crimes. It also regrets the lack of information about measures to ensure the promotion of the civic space, where individuals can meaningfully exercise their right to freedom of expression and association and promote human rights in a safe environment (arts. 2, 12, 13 and 16).

35. The State party should ensure that human rights defenders, including women human rights defenders, journalists, bloggers, political opponents and government critics are protected from acts of intimidation, harassment, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment to which they may be exposed because of their activities, and should take all measures to promptly, effectively and impartially investigate any such allegations and punish those responsible. It should also take additional measures to promote the civic space.

Conditions of detention

36. While acknowledging the steps taken by the State party to improve conditions in places of detention, the Committee is concerned about reports indicating overcrowding and poor material conditions in places of deprivation of liberty, in particular insalubrity and inadequate hygiene, lack of ventilation, water supply and sanitation problems, the poor quality of the food provided, shortages in medical and health-care services, including mental health care, and limited recreational or educational activities to foster rehabilitation. Of particular concern are the unsuitable material conditions of detention for women and girls, notably pregnant women and women with babies, in the West Bank and the Gaza Strip. The

Committee is further concerned about the reported prolonged use of solitary confinement and ill-treatment of those detained in the Gaza Strip for drug-related offences, suspected collaboration with Israel or alleged affiliation with Fatah and Salafist groups. It regrets the lack of comprehensive official data on the number of pretrial detainees and convicted prisoners and the location and occupancy rate of all places of deprivation of liberty, disaggregated by the facilities under the auspices of all relevant ministries or other authorities (arts. 2, 11 and 16).

37. The Committee calls upon the State party to intensify its efforts to bring conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The State party should, in particular:

(a) **Take all measures to reduce overcrowding in prisons, including by making more use of alternatives to detention and continuing to implement plans to develop and renovate the infrastructure of prisons and other detention facilities;**

(b) **Guarantee that the basic needs of persons deprived of their liberty are satisfied, including with regard to water, sanitation and food, and increase the number of trained and qualified prison staff, including medical staff, to ensure the proper medical and health care of prisoners, in accordance with rules 24–35 of the Nelson Mandela Rules;**

(c) **Facilitate access to recreational and cultural activities in places of detention, as well as vocational training and education, with a view to supporting the rehabilitation of detainees in the community;**

(d) **Ensure that female prisoners, in particular those who are pregnant or with babies, have access to adequate health facilities and hygienic services and are detained in gender-sensitive conditions;**

(e) **Ensure that prisons are adapted to the needs of detainees with disabilities;**

(f) **Bring its legislation and practice on solitary confinement into line with international standards, particularly rules 43–46 of the Nelson Mandela Rules;**

(g) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to acts of torture and ill-treatment by prison personnel and that the alleged perpetrators are prosecuted and adequately punished;**

(h) **Provide the requested data on the number of pretrial detainees and convicts in all facilities in its next periodic report.**

Pretrial detention

38. The Committee is concerned about the reported high number of people placed in pretrial detention, many of them in prolonged pretrial detention. It is also concerned that, as a result, inmates on remand are not systematically separated from convicted prisoners, nor women from men or children from adults (arts. 2, 11 and 16).

39. The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods and in accordance with the law, taking into account the principles of necessity and proportionality. It should further ensure the separation of pretrial detainees from convicted prisoners, women from men and children from adults in all places of detention.

Monitoring of detention facilities

40. The Committee welcomes the State party's accession to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 29 December 2017, and that a number of governmental institutions, international

organizations and civil society actors are invested with powers of supervision over places of detention and custody. It also takes note of the publication in the Official Gazette of Decree-Law No. 25 on the National Commission against Torture on 25 May 2022. However, the Committee is concerned that the Decree-Law provides for the establishment of a government-led national preventive mechanism whose members are to be selected and appointed by the President of the Palestinian Authority upon the recommendations of the Council of Ministers, which is likely to affect the Commission's functional independence. It further regrets the lack of information on steps taken by the State party to follow up on visit reports and on the measures taken to implement the recommendations put forward by monitoring bodies (arts. 2, 11 and 16).

41. The State party should:

(a) **Promptly review, in consultation with the Independent Commission for Human Rights and civil society organizations, Decree-Law No. 25 on the National Commission against Torture to ensure the full operational independence and financial autonomy of the Commission, in line with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the guidelines of the Subcommittee on the Prevention of Torture on national preventive mechanisms;**¹²

(b) **Take all possible measures to ensure that international and national monitors are able to undertake regular, independent and unannounced visits to all places of deprivation of liberty in the State party and speak confidentially to all detained persons;**

(c) **Take appropriate steps to implement the recommendations put forward by monitoring bodies following their visits to detention facilities, in particular where allegations of torture or ill-treatment are raised in the reports.**

Deaths in custody

42. The Committee regrets the lack of reliable information and statistical data on the total number of deaths in custody for the period under review, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death. It is also concerned about the allegations that causes of death in custody include torture and the lack of health care, and regrets the lack of information on investigations undertaken in that regard. The Committee is particularly concerned about the case of Nizar Banat, who died in custody in June 2021 after being arrested and allegedly severely beaten and tortured in detention by the Hebron preventative security forces. It is further concerned that the State party has so far failed to ensure accountability for Nizar Banat's death, as the 14 officers initially charged with his death by a military court were temporarily released in June 2022 (arts. 2, 11 and 16).

43. The State party should:

(a) **Compile and provide to the Committee detailed information on the cases of death in all places of detention, in both the West Bank and the Gaza Strip, their causes and the outcome of the investigations into the deaths;**

(b) **Ensure that all deaths in custody are promptly and impartially investigated by an independent entity, including by means of independent forensic examinations, and, where appropriate, apply the corresponding sanctions, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(c) **Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons, and review the effectiveness of strategies for the prevention of suicide and self-harm;**

(d) **Ensure that all those responsible for the torture and killing of Nizar Banat, including higher ranked officials who may have been involved in the incident, are duly**

¹² CAT/OP/12/5.

prosecuted and punished, with appropriate sanctions imposed by a civil court with due process and fair trial guarantees.

Mental health institutions

44. The Committee is concerned that the State party failed to adopt and implement legislation prohibiting forced medical treatments, physical and chemical restraints and solitary confinement of persons with psychosocial or intellectual disabilities in psychiatric institutions. It also notes with concern that there are no measures taken to enable persons deprived of their liberty in such facilities to have access to mechanisms designed to investigate allegations of human right violations, in particular torture or ill-treatment. Furthermore, it is concerned about reports of ill-treatment and the possible torture of persons with disabilities within residential care settings, including physical violence, intimidation and abuse. Moreover, it regrets the lack of information on the number of persons with disabilities deprived of their liberty, their legal status and the conditions in which they reside, as well as on the work of the oversight mechanisms responsible for inspecting and monitoring psychiatric institutions (art. 2, 11 and 16).

45. The State party should expeditiously adopt the draft decree-law on the rights of persons with disabilities, as well as a comprehensive law on mental health to explicitly prohibit forced medical treatments, physical and chemical restraints and the solitary confinement of persons with psychosocial or intellectual disabilities in psychiatric institutions. It should also train health-care professionals on the rights of persons with disabilities, specifically on the right to free and informed consent. It should further ensure that instruments of restraint and force can only be used in accordance with the law and under appropriate supervision and for the shortest time necessary, and that their use is limited to that which is strictly necessary and proportionate. Finally, it should ensure that psychiatric institutions are adequately monitored and that effective safeguards are in place to prevent any torture or ill-treatment of persons in such facilities.

Juvenile justice

46. While welcoming the adoption of Decree-Law No. 4 of 2016 on the protection of Palestinian juveniles, the Committee is concerned about reports that it is not being enforced in the Gaza Strip. It is also concerned that the Palestinian Children's Act of 2004 (as amended in 2012) and the Decree-Law on the protection of Palestinian juveniles, applicable in the West Bank, set the minimum age of criminal responsibility at 12 years, while the Juvenile Offenders Law No. 2 of 1937, applicable in the Gaza Strip, sets it at 9 years. Furthermore, the Committee is concerned that children are sometimes held in detention centres for adults, that children in detention, both in the West Bank and in the Gaza Strip, are reportedly ill-treated and that there is limited information on the use of non-custodial measures¹³ (arts. 2, 11 and 16).

47. The State party should take all possible measures to implement Decree-Law No. 4 of 2016 on the protection of Palestinian juveniles and international juvenile justice standards, in particular the Beijing Rules, in all parts of the State party. It should also: (a) raise the minimum age of criminal responsibility to an internationally acceptable standard; (b) promote non-custodial and non-judicial measures, such as diversion, probation, mediation, counselling or community service, wherever possible, for all child offenders; (c) ensure that ill-treatment of children in places of deprivation of liberty does not occur; and (d) provide qualified and independent legal aid free of charge to children in conflict with the law and offer child-friendly and accessible complaint mechanisms.

Death penalty

48. While welcoming the accession of the State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death

¹³ CRC/C/PSE/CO/1, paras. 58–59.

penalty, on 18 March 2019, and the de facto moratorium on the implementation of the death penalty in the West Bank, where no executions have been carried out since 2005, the Committee is concerned that Palestinian legislation continues to provide for the death penalty for a range of relatively less serious offences, in contravention of international legal standards that limit its application to crimes of extreme gravity involving intentional killing.¹⁴ It is also concerned that death sentences are still handed down in the Gaza Strip, including by military courts against civilians without due process and fair trial guarantees, and that executions are still held. It is further concerned that death-row inmates face conditions of detention that, in and of themselves, can amount to ill-treatment. Moreover, it is concerned that, given the current political divide between the Palestinian authorities in the West Bank and the de facto authorities in Gaza, those sentenced to death in Gaza may not be able to exercise their right to seek a pardon or have their sentence commuted by the President of the Palestinian National Authority, as provided for in article 109 of the Basic Law of 2003 (arts. 2, 11 and 16).

49. The State party should take affirmative steps to formalize the moratorium on the death penalty, with a view to abolishing it in law in both the West Bank and the Gaza Strip, in line with its obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It should also intensify its efforts to commute all death sentences into alternative penalties, ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment, strengthen legal safeguards and guarantees of due process in all phases of the proceedings and concerning all offences, and take all possible measures to prohibit military courts from exercising jurisdiction over civilians in the Gaza Strip.

Gender-based violence

50. The Committee welcomes the State party's measures to combat violence against women, including the adoption of Decree-Law No. 5 in March 2018 repealing article 308 of the Jordanian Penal Code of 1960, which is applicable in the West Bank and which exonerated perpetrators of the crime of rape if they married the victim, the repeal of article 340 of the Jordanian Penal Code and the revisions to articles 98 and 99 thereof, which provided for mitigating factors in cases of homicide of women or so-called "honour killings". However, the Committee is concerned about:

- (a) The delay in the adoption of the draft family protection law, although it has already been reviewed by the legislative harmonization committee;
- (b) The increased number of femicide cases since the outbreak of the COVID-19 pandemic in 2020 and the persistence of so-called "honour-killings" and domestic and sexual violence, which remain socially accepted and underreported owing to the stigma suffered by victims;
- (c) The arbitrary arrest and detention of women, including victims of gender-based violence, on discriminatory charges of sexual offences such as adultery and "moral misconduct";
- (d) The lack of family protection units in the Gaza Strip, despite the high incidence of gender-based violence against women, including domestic violence (arts. 2, 12–14 and 16).¹⁵

51. The State party should:

- (a) **Expedite the adoption of the draft family protection law and the draft penal code to ensure that all cases of gender-based violence, especially those that engage the international responsibility of the State party under the Convention, in particular femicides, so-called "honour crimes" and sexual and domestic violence, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims or their families receive redress, including adequate**

¹⁴ See article 6.2 of the International Covenant on Civil and Political Rights and paragraph 35 of the Human Rights Committee general comment No. 36 (2019).

¹⁵ CEDAW/C/PSE/CO/1, paras. 26–27.

compensation and rehabilitation, and have access to legal assistance, safe shelters and the necessary medical care and psychosocial support;

(b) Intensify efforts to raise awareness among both men and women, including through educational and media campaigns, of the criminal nature of gender-based violence against women in order to challenge its social acceptance and address the stigma discouraging victims from reporting it;

(c) Amend its legislation to ensure that victims of sexual abuse are not punished if they press charges, and immediately release and compensate women and girls who have been convicted of sexual offences such as adultery and “moral misconduct”;

(d) Take concrete steps to establish adequately resourced family protection units in the Gaza Strip to provide services to women and girls who are victims of gender-based violence, including domestic violence.

Redress, including compensation and rehabilitation

52. The Committee is concerned about the lack of explicit provisions in domestic legislation that provide for the right of victims of torture and ill-treatment to fair and adequate compensation, including the means for as full medical and psychosocial rehabilitation as possible, as required under article 14 of the Convention. It also regrets that the State party has failed to provide comprehensive information on the redress afforded to victims of torture or their families by the courts or other State bodies since the entry into force of the Convention in the State party (art. 14).

53. The State party should review its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and as full a rehabilitation as possible, and ensure that victims may, inter alia, seek and obtain prompt, fair and adequate compensation, including in cases where the civil liability of the State party is involved, in accordance with the Committee’s general comment No. 3 (2012). It should also compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of such redress and the results achieved.

Training

54. The Committee acknowledges the efforts made by the State party to develop and implement education and training programmes in human rights, including modules on the Convention covering the absolute prohibition of torture, for judges, prosecutors and members of the security forces. However, it regrets the lack of training on the contents of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol as revised). The Committee also regrets that no mechanism for evaluating the effectiveness of training programmes has been established, as well as the absence of specific training for the military, the intelligence agencies and relevant medical personnel (art. 10).

55. The State party should:

(a) Further develop mandatory initial and in-service training programmes to ensure that all public officials are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and, on conviction, appropriately punished;

(b) Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol as revised;

(c) Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and

ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.

Follow-up procedure

56. The Committee requests the State party to provide, by 29 July 2023, information on follow-up to the Committee's recommendations on the definition and criminalization of torture, the national human rights commission and the monitoring of detention facilities (see paras. 13, 19 and 41 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.

Other issues

57. The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention.

58. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

59. The Committee also invites the State party to submit a core document in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents¹⁶ and paragraph 16 of General Assembly resolution 68/268.

60. The Committee requests the State party to submit its next periodic report, which will be its second, by 29 July 2026. To that end, the Committee invites the State party to accept, by 29 July 2024, the simplified reporting procedure consisting of the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's replies to that list of issues would constitute its second periodic report under article 19 of the Convention.

¹⁶ HRI/GEN/2/Rev.6, chs. I and III.